

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)

Petitions for Protection from Whipsawing on)
the U.S.-Philippines Route)

IB Docket No. 03-38

OPPOSITION OF GLOBE TELECOM

Globe Telecom

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Globe Telecom ("Globe Telecom" or "Globe") is a full service telecommunications provider, licensed and operating in the Philippines. Globe Telecom offers local exchange (LEC), interexchange (IXC) and international telephony (International Gateway Facility or IGF), cellular mobile telephone service (CMTS), data communications and Internet services. Globe Telecom opposes the Petition filed by AT&T Corp. ("AT&T") to the Federal Communications Commission ("FCC" or "Commission") requesting that the FCC order U.S. carriers to stop paying Filipino carriers settlement payments,¹ based on unsupported allegations that Globe Telecom has disrupted AT&T circuits.

I. EXECUTIVE SUMMARY

Globe Telecom opposes AT&T's Petition to the Commission to order U.S. carriers to stop settlement payments to Filipino carriers. Such an order would be unjustified, given that Globe Telecom has neither blocked AT&T's direct circuits, nor threatened to. Moreover, AT&T has already increased consumer rates on the U.S.-Philippines route, so an order would not prevent any alleged consumer "injury."

¹ AT&T Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief, IB Docket No. 03-38 (filed Feb. 7, 2003) ("AT&T Petition").

An order stopping payments to Globe Telecom would be unwarranted, given that AT&T has not demonstrated that "whipsawing" has occurred on the highly-competitive route. Globe Telecom does not have the market power to whipsaw AT&T. Moreover, in an Order February 7, 2003, the independent Philippine regulator, the National Telecommunications Commission condoned the increased rates of \$0.12 (for fixed line network terminations) and \$0.16 (for mobile network terminations) as being reasonable, given the 1-5% teledensity of the Philippines, the ITU's Annex E benchmark, and the FCC's own *Benchmark Order*. A stop-payment order would provide AT&T with undue leverage when negotiating with Filipino carriers, resulting in reverse whipsawing, and distorting competition on the U.S. route. FCC intervention would also provide AT&T with a competitive advantage vis-à-vis foreign correspondents from other countries, which have accepted the \$0.12 and \$0.16 termination rates.

NTC regulation calls for non-discriminatory interconnection rates. In an NTC Memorandum Circular establishing a process for transitioning to cost-based interconnection rates, NTC required Filipino carriers to offer non-discriminatory interconnection rates to other carriers using the same facilities and services, and that charges for interconnection offered to other carriers could not be higher than a carrier's internal transfer price. For the FCC to order U.S. carriers to stop paying Filipino international termination settlements, particularly after the NTC has established non-discriminatory and cost-based rules, and condoned the increased rate, would violate the duty the FCC has to international comity.

AT&T owes Globe Telecom millions of dollars for traffic passed through their direct circuits in 2002 under the old rates. Globe believes AT&T has withheld payment to increase its negotiating leverage with Globe. For the FCC to order the stop payment of these and

others monies would not only provide an unfair advantage to AT&T, but would enable AT&T to violate its contractual obligations, contrary to U.S. policy. If the FCC is to act in this matter, Globe Telecom respectfully requests the FCC's assistance in collecting receivables from AT&T, outstanding from periods prior to Globe Telecom's proposed rate increase.

II. GLOBE TELECOM CONTINUES TO ACCEPT TRAFFIC FROM AT&T ON AT&T'S DIRECT CIRCUITS

Contrary to AT&T's assertions in its Petition to suspend payments to Globe Telecom, Globe Telecom has not blocked AT&T's direct circuits. Globe Telecom provided AT&T notice on December 26, 2002 of the new rate. Globe provided AT&T five weeks' notice prior to the January 31, 2003 expiration of their termination rate agreement for switched voice services. Globe Telecom, despite AT&T's refusal to accept the new rate and despite that it has no current agreement for termination rates with AT&T, has continued to terminate AT&T's traffic terminating to the Globe network. Globe Telecom did not threaten to disconnect AT&T circuits during discussions of the new rate. After AT&T's refusal to accept the rate, Globe Telecom requested AT&T to stop sending Globe traffic, to prevent receivables from accruing and being disputed. AT&T did not honor this request. Despite AT&T continuing to send traffic, Globe Telecom did not cut AT&T's direct circuits.

However, because Philippine Long-Distance Telephone Company ("PLDT") and Globe Telecom have entered into a new interconnection agreement to reflect the new rate of \$0.12 to terminate international gateway traffic to their respective local exchange carriers, and a new rate of \$0.16 to terminate international gateway traffic to their respective mobile telephone providers, Globe Telecom, with its IGF as a transit provider, would be significantly harmed by continuing to terminate AT&T's off-net traffic to PLDT's local exchange carrier or its mobile service

provider. For every minute of AT&T off-net traffic Globe Telecom terminated to PLDT's local exchange carrier, Globe would lose \$.04. For every minute of AT&T off-net traffic Globe terminated to PLDT's mobile carrier, Globe would also lose \$0.04. AT&T is aware of the substantial losses Globe will bear if it terminates AT&T's off-net traffic.

To prevent such losses, Globe Telecom has discontinued terminating AT&T's off-net traffic to PLDT and other Filipino domestic carriers that have instituted the new termination rates for their respective networks. With no effective termination rate in place, Globe is not obligated to terminate any of AT&T's switched voice traffic, yet it continues to terminate at least the traffic destined for Globe's own network as a sign of its willingness to continue doing business with AT&T. Globe Telecom knows of no provision of law or international principle that obligates it to incur significant losses from a correspondent that refuses to enter into a new agreement for a uniformly applied rate.

Globe Telecom's disclosure to the Philippine Securities and Exchange Commission is relative to the new termination rates agreed upon between Globe Telecom and PLDT as respective Philippine IGFs and LEC/CMTS. The disclosure of this interconnection agreement is cited by AT&T in its Petition Summary and again at page 4 as evidence of Filipino collusion. AT&T implies in its Petition that the Filipino carriers undertook this agreement solely for the purpose of colluding together to whipsaw American carriers. That mischaracterizes the disclosure. The entire disclosure, found at AT&T Petition, Attachment 1, reads:

"On 03 January 2003, Globe and Islacom signed an agreement with PLDT, Smart and Piltel to amend their existing interconnection agreements. The material provisions of the amendments to the interconnection agreements are:

- (a) Effective 01 January 2003, metered calls terminating to an LEC network will be charged a termination rate of P 2.50 per minute, an increase from the previous termination rate of (Peso) 2.00 per minute. Effective 01 January 2004, the termination rate will further increase to (Peso) 3.00 per minute.
- (b) Effective 01 January 2004, calls terminating to a CMTS network will be charged a termination rate of P 4.00 per minute, a decrease from the previous termination rate of P 4.50 per minute.
- (c) Effective 01 February 2003, calls passing through an IGF terminating to an LEC network will be charged a termination rate of US \$ 0.12 per minute, an increase from the previous termination rate of US\$ 0.08 per minute.
- (d) Effective 01 February 2003, calls passing through an IGF terminating to a CMTS network will be charged a termination rate of USD 0.16 per minute an increase from the previous termination rate of USD 0.12 per minute.

On various dates in January 2003, Globe and Islacom signed an agreement with Bayan Telecommunications, Inc., and Globe signed agreements with Digital Telecommunications Philippines, Inc. and Bell Telecom, Inc. to amend their existing interconnection agreements. The material provisions of the amendments to the interconnection agreements are covered in (a) through (d) above, except that in the case of (a) for metered calls terminating to a LEC network, the termination rate of P 2.50 per minute will be effective 01 February 2003.”

The agreement, therefore, is merely the instrument by which competitive carriers operating in different segments of the market (international, local exchange and mobile respectively) agree to terminate their traffic to their various networks. It is not evidence of collusion. There must be some agreed-upon rate, and some contractual record of that agreement, for carriers to operate. Moreover, the increased rates affect the entire Filipino telecommunications industry. They were not adopted for the purpose of whipsawing U.S. carriers. Twenty-seven of Globe’s major correspondents from other countries have accepted the US \$.12 and US \$.16 international termination rates.

AT&T attempts to depict Globe Telecom’s action as collusive, when, in fact, Globe Telecom has been attempting to comply with the policies of its own regulator, the National

Telecommunications Commission ("NTC") on implementing uniform non-discriminatory interconnect charges.

The NTC is the Filipino telecommunications regulator, independent from any operator, and is empowered under Philippine law to regulate communications in the Philippines, including interconnection between public telecommunications entities.² In a July 2002 Memorandum Circular "Implementing Rules and Regulations for Specific Guidelines for Competitive Wholesale Charging for Interconnection Services" ("MC-09-07-2002") (attached as Exh. 1), the NTC required all Filipino Public Telecommunications Entities ("PTEs") to transition to cost-based and non-discriminatory interconnection charges.³ For the FCC to punish Filipino carriers for complying with regulations in their own market would violate the principles of comity that AT&T once held so dear.⁴

² See generally Philippine Republic Act 7925, Telecommunications Policy Act of 1995 (attached as Exh. 2).

³ See *id.* at Article III, *General Principles Relating to the Charges for Interconnection Service*. The Memorandum Circular, which establishes "fair and consistent charging principles which take into account the costs of providing the services," provides in Section 3(b) that:

The charges for Interconnect Services should be non-discriminatory, meaning:

(i) At a particular POI, the charges offered by a PTE to other PTEs, should be the same for all PTEs where they are utilizing the same infrastructure and functionality.

Section 3(c) provides:

The charges that a PTE applies to other PTEs for equivalent Interconnect Services and/or Retail Services must not be higher than the internal transfer prices for Interconnect Services / and/or Retail Services applied by it to its own internal businesses.

⁴ See *In re VIA USA, Ltd Telegroup, Inc.*, Order, Authorization and Certificate, 9 FCC Rcd 2288, 2288-89 (1994), *aff'd*, 10 FCC Rcd 9540 (1995). In *VIA USA*, the FCC had to decide whether to authorize U.S. carriers to provide call-back services, despite the fact that in many countries such services were illegal. AT&T argued in that proceeding that call-back by U.S. resellers violated the ITU International Regulations, as well as foreign

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For the provision of termination into the Philippine market, the carriers can be grouped into three categories. First, there are many IGF operators (nine) which receive inbound traffic to the country. Second there are inter-exchange (IXC) carriers which carry domestic long-distance traffic among Philippine carriers. Finally, there are many local exchange fixed-line and mobile operators, which finally terminate inbound traffic end-users. Since under the MC-09-07-2002, interconnecting carriers are required not to discriminate in their rates amongst PTE, or as between their internal and third party rates, and major fixed-line and mobile networks also have IGF operations, the non-discrimination requirement has tended to produce uniform interconnection rates, particularly given the transparency in the market.

III. AT&T HAS WITHHELD PAYMENTS TO GLOBE TELECOM

AT&T complains of mistreatment by Filipino carriers, but it fails to mention its own treatment of Globe Telecom. AT&T owes Globe Telecom millions and millions of dollars in past receivables, a substantial portion of which AT&T promised to pay in December 2002. AT&T made additional promises to make this payment in February, but that date came and went without AT&T fulfilling its promises. AT&T has not paid Globe for payables covering August and September 2002 traffic, which it had promised to pay in December. Moreover, AT&T still owes Globe approximately US \$ 309,000 for traffic from January to July 2002, payment for which was due in various months from March to December 2002. AT&T requested that the December payment, of approximately US \$ 3.5 million, be moved to February 4, 2003. Globe accepted. However, this payment is outstanding. Total net payables due Globe from AT&T

administrations' national law, and that for the FCC to authorize call-back would violate principles of international comity. *See id.*

calculated to the end of February would amount to approximately US \$ 13.5 million – a significant sum for a carrier in a country with less than 5% teledensity.

AT&T is obligated under its agreement with Globe Telecom to make payment as soon as practicable, and in any event no later than six weeks from the time the parties complete the calculation of net balances for any given month. However, AT&T owes past receivables to Globe Telecom that are substantially older than six weeks. Globe's contract with AT&T provides that if AT&T is in default for more than sixty days, Globe may provide thirty days' notice that it will terminate AT&T circuits. Under the terms of the contract, a party that has not been paid may terminate without surrendering its right to payment. Nonetheless, Globe Telecom has not chosen to protect itself by providing 30 days' notice of circuit termination. Not until AT&T requested the FCC to stop all payments to Globe, including the significant sums identified above, did Globe raise its rights of possibly providing notice for terminating circuits, in the event the FCC grants the order.⁵ These are standard contractual terms between international carriers, with which AT&T has failed to comply, to the detriment of Globe Telecom. The amounts AT&T continues to withhold from Globe are substantial by the standards of any market in the world, and yet it is AT&T that depicts Globe as the one that has abused its market power against AT&T.

IV. GLOBE TELECOM HAS NOT WHIPSAWED AT&T

Globe Telecom has not whipsawed AT&T. Globe Telecom, as only one of nine IGFs, with only 8 percent of local fixed lines, and only one of six cellular operators, lacks the market

⁵ See Letter from Gil B. Genio, Globe Telecom's Head, Wireline Business to Mark Miller, ATT&T Regional Director, Asia Pacific Route (Feb. 14, 2003) (attached as Exh. 3).

power to “whipsaw” any carrier, let alone AT&T. Arguably, a competitive carrier like Globe Telecom cannot whipsaw a U.S. carrier. Neither can there be whipsawing when an independent regulator has condoned the rate increase in a competitive market.⁶ Where a foreign carrier is but one of many offering termination services, as the FCC has recognized, “its ability to whipsaw U.S. carriers is substantially diminished, if not eliminated”⁷ and, in countries like the Philippines, “where settlement rates are low, the dangers to U.S. consumers from whipsawing are diminished.”⁸

The FCC’s own enforcement cases have found that “whipsawing” occurs where a foreign monopolist uses its market power to play competitive U.S. carriers off one another in order to obtain preferential terms during negotiations.⁹ Globe Telecom, one of several Filipino carriers competing to provide termination services to foreign carriers, is not using any market power to play U.S. carriers off each other to extract more favorable rates. Globe Telecom is merely trying to ensure that it is not disadvantaged in its highly-competitive market. Moreover, it is implementing a uniform interconnection rate sanctioned by the NTC, an independent regulatory

⁶ See *Memorandum Order*, NTC, February 7, 2003 (attached as Exh. 4).

⁷ *1998 Biennial Regulatory Review—Reform of the International Settlements Policy and Associated Filing Requirements; Regulation of International Accounting Rates; Market Entry and Regulation of Foreign-affiliated Entities*, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963, 7971 (1999).

⁸ *1998 Biennial Regulatory Review—Reform of the International Settlements Policy and Associated Filing Requirements; Regulation of International Accounting Rates*, 13 FCC Rcd 15320, 15331 (1999).

⁹ *AT&T Corp., et al., Petitions for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Peru*, Order and Authorization, 11 FCC Rcd 12107 (1996), *aff’d*, 14 FCC Rcd 8318 (1999); *AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, Order, 11 FCC Rcd 18014 (1996), *aff’d*, 14 FCC Rcd 8306 (1999); *Sprint Communications Co., L.P.; Request for Modification of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Mexico*, Memorandum Opinion and Order, 13 FCC Rcd 24998 (1998); *MCI Communications Corp.; Petition for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with India*, Memorandum Opinion and Order, 13 FCC Rcd 17168 (1998).

body. Globe Telecom's request that AT&T stop sending Globe traffic in the event AT&T does not agree to the new rates, in order to prevent receivables from accruing and being disputed, is not a threatening negotiating tactic, made possible by market share, but an attempt to protect itself from further financial harm brought about by AT&T's refusal to agree to a uniform rate. AT&T did not comply with Globe's request and in fact continued to send traffic to Globe – hardly the behavior of a weaker correspondent that is being whipsawed. If the FCC grants AT&T's request, and orders all U.S. carriers to stop payments owed Filipino carriers, Globe Telecom's enforcement of its contract rights and the subsequent notice and termination of circuits will be reasonable behavior towards a carrier from which Globe Telecom has no reasonable expectation of concluding a service agreement nor reasonable expectation of being paid.

V. THE FCC SHOULD RESPECT THE COMPETENCE OF THE INDEPENDENT REGULATOR IN THE PHILIPPINES

The FCC should respect the competence of the NTC, an independent regulator in a sovereign nation. The Commission has long required U.S. international carriers to comply with international law and the laws of the countries in which they operate.¹⁰ It has compelled such compliance even where it disagrees with the decisions of a foreign legislature or regulator, recognizing the right of foreign governments to set policies in their own telecommunications markets.¹¹ In this case, both the NTC and the U.S. policymakers have established as a goal cost-

¹⁰ *VIA USA Ltd.*, 9 FCC Rcd at 2292.

¹¹ *Philippine Long Distance Co. v. Int'l Telecom, Ltd.*, Memorandum Opinion and Order, 15 FCC Rcd 6009, 6012 (2000).

based interconnection rates.¹² It is only natural that the actual level of costs may vary between a country such as the U.S. with 94% teledensity and the Philippines, with 1-5% teledensity.

The NTC reviewed the basis of the interconnection rates of Philippine carriers when it required the carriers, in the course of the deliberations for NTC MC 09-07-2002, to submit their cost data on an anonymous basis to a third-party consultant. Thus, when the current dispute was escalated to the NTC, the NTC in its Order of February 7, 2003 stated that “as shown, Philippine termination rates, even at increased rates, are still well below the FCC benchmark rate of U.S. \$.19 per minute for low/middle income economies.”¹³ The NTC stated that “these rates are low compared with ITU suggested target settlement rates for countries with teledensity between 1 to 5 telephones per 100 population which is US\$.238 per minute.”¹⁴

In its February 7, 2003 Order condoning the new Philippine termination rates requested by PLDT, Smart, Globe Telecom, BayanTel and other Philippine carriers similarly situated, the NTC exercised its authority to regulate international telecommunications services, much as the FCC did in the FCC’s *Benchmarks Order*.¹⁵ In upholding the *Benchmarks Order*, the D.C. Circuit rejected arguments that the FCC unlawfully asserted regulatory authority over foreign telecommunications services.¹⁶ The Court found that the Commission did not exceed its

¹² See Section 252, 47 U.S.C. § 252; see also MC-09-007-2002 (attached as Exh. 1), and Philippine Republic Act 7925, Telecommunications Policy Act (attached as Exh. 2).

¹³ *Maintaining Status Quo of Circuits in the Interest of Public Service and National Welfare*, NTC Memorandum Circular (February 7, 2003).

¹⁴ *Id.*

¹⁵ *International Settlement Rates*, 12 FCC Rcd 19806 (1997), *aff’d sub nom.*, *Cable and Wireless Plc v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).

¹⁶ *Cable and Wireless plc*, 166 F.3d at 1229.

authority simply because setting benchmarks had extraterritorial consequences.¹⁷ The NTC decision, much like the FCC's *Benchmarks Order*, directly regulates Philippine carriers, and only indirectly effects U.S. carriers. Thus, the NTC decision should be afforded the same comity that the Philippines and other countries have afforded the *Benchmarks Order*, especially in view of the fact that the NTC decision is not inconsistent with that Order.

For the FCC to rule, in effect, that the NTC does not have the authority or the competence to regulate its own telecommunications market would not be well received by policymakers in the Philippines. Already the Philippine Senate is examining the matter. In a floor speech on February 18, 2003, the Senate Minority Floor Leader, Senator Vicente Sotto III questioned, in the context of the current termination rate controversy, whether the U.S. regards the Philippines as a colony.¹⁸ Noting the disparate bargaining power of the two countries, Senator Sotto's colleague, Senator Sergio Osmena complained that Filipinos too often are "willing to give away the whole ship where we have only a very small boat and the Americans have a huge aircraft carrier."¹⁹ The Senators may ask who is whipsawing whom—not a helpful question from an ally located in a strategic geographic position in Asia when there are broader, national security issues at play.

¹⁷ *Id.* at 1230.

¹⁸ See Record of Session, February 18, 2003, Republic of the Philippines Senate Floor Statement, Senator Sotto stating "Right now, everything is frozen. The [Filipino] telecom companies cannot collect. Nothing is done because of the issue raised by these big American companies to the FCC." (attached as Exh. 5).

¹⁹ *Id.*

VI. PHILIPPINES INTERNATIONAL OBLIGATIONS

In addition to being consistent with Philippine law, the increased rates are consistent with the obligations of the Republic of the Philippines in all applicable international instruments. The FCC should therefore deny AT&T's request in order to comply with the doctrine of international comity. "The doctrine of international comity reflects the broad concept of respect among sovereign nations, under which one nation recognizes the laws of another."²⁰ This doctrine obligates the FCC to respect the laws of the Republic of the Philippines and the regulations of its foreign counterpart, the NTC, as long as these laws and regulations do not contravene the international commitments of the Philippines.

A. COMPLIANCE WITH ITU ANNEX E

The NTC regulations comply with the rate benchmarks of the International Telecommunication Union ("ITU") International Telecommunication Regulations ("ITR") and ITU Recommendation D.140 governing accounting rates. Article 6.2 of the ITRs recommends that accounting rates take into account "relevant cost trends."²¹ Certainly the globally depressed telecommunications market in which the cost of capital has risen, carriers' debt ratings have fallen, and defaults by bankrupt correspondents have reduced revenue are "relevant cost trends." Recommendation D.140 recommends that "accounting rates for international telephone service

²⁰ *Enforcement of Other Nations' Prohibitions Against the Uncompleted Call Signaling Configuration of International Call-back Service*, Notice of Proposed Rulemaking, FCC 02-28, IB Docket No. 02-18, RM-9249, ¶ 1 (rel. Feb. 13, 2002) ("*Enforcement of Other Nations' Prohibitions NPRM*").

²¹ International Telecommunication Regulations, Art. 6, § 6.2.

should be cost-oriented” and non-discriminatory. The Recommendation contains an Annex that provides recommended settlement rates, based on countries’ teledensity and other cost factors.²²

The NTC regulations—which specifically require non-discrimination and a transition to cost-based interconnection charges—clearly meet the Philippines’ ITU obligations. Indeed, the rates about which AT&T complains are below the ITU’s recommended settlement rates for termination into the Philippines.²³

B. COMPLIANCE WITH WTO OBLIGATIONS

The United States, as well as all other Members of the World Trade Organization (“WTO”), has recognized the sovereign right of each nation to regulate its telecommunications “in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right.”²⁴ While the Philippines can take great pride in the rapid development of its competitive telecommunications market, it is still, by all economic indicia, a developing country. Globe Telecom had understood that it was U.S. telecom policy to support the efforts of Members to establish independent regulators, especially in developing countries.

²² ITU-T Recommendation D.140 at 3 and Annex E.

²³ AT&T is fighting an increase of the settlement rate from \$.08 per minute to \$.12 per minute for fixed line terminating calls and US \$ 0.16 for mobile network terminating calls. Even these settlement rates are below the settlement rates for the Philippines recommended in Annex E to Recommendation D.140. Annex E recommends a settlement rate of .251 SDRs per minute (about US \$.32) for countries like the Philippines with a teledensity of 1-5 telephones per 100. The specific target rate for the Philippines recommended by the ITU is .177 SDRs (or US \$.238)—100% higher than the increased rate.

²⁴ International Telecommunication Regulations, Preamble; General Agreement on Trade in Services, Preamble, *reprinted in Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements*, H.R. Doc. No. 103-316, Vol. 1 at 1588 (1994).

The Philippines did not make the same additional commitments as the United States with respect to cross-border interconnection being made available at cost-oriented rates. Rather, the Republic of the Philippines only made additional commitments to ensure the availability of interconnection on terms and conditions that are fair, transparent and reasonable.²⁵ The NTC regulations, and Globe Telecom's implementation of these regulations, comply with these principles. Moreover, while not bound by any WTO commitment on cost-orientation, NTC regulations and Globe Telecom's implementation are nonetheless consistent with the U.S.' additional commitment in its Reference Paper that interconnection be available at "cost-oriented rates."

Importantly, Globe Telecom is not a major supplier for international termination services, to use WTO terminology on competitive safeguards. Globe Telecom is but one of many carriers offering termination services to the Philippines. Globe is not even the largest of the nine IGFs. With a market share of less than 10% for local lines, and with its landline service areas confined largely to the capital region and three outlying, non-contiguous provinces, Globe has an almost negligible share of the wireline market, where it not only faces PLDT as its major competitor, but has to compete with a number of small regional telephone companies in its service areas. There are, in fact, more than fifty small telephone companies operating in various provinces all over the Philippines. Globe, while arguably the second largest mobile operator, also faces fierce competition from the two brands of the cellular affiliate of the dominant landline operator, and must compete with at least one other cellular brand of Digitel, also an IGF and a wireline player

²⁵ World Trade Organization, Fourth Protocol to the General Agreement on Trade in Services, Philippines Schedule of Specific Commitments (Apr. 15, 1997).

larger and with more service areas than Globe. Globe Telecom is clearly not a major supplier, but a competitor among many in a highly competitive market.

VII. SOUND PRICING REGULATION POLICY

From the perspective of adopting sound pricing regulation, it would be unwise for the Commission to grant AT&T's request to find all rate increases impermissible, especially in view of the global economic downturn. To grant that aspect of AT&T's petition would return the FCC to an era of rate regulation decades past. Such a decision would also undermine foreign carriers' interest in agreeing to reduced rates. If they believed that they would never be able to increase a termination rate, despite what economic downturns may await, foreign carriers would be reluctant to agree to reduced rates, harming U.S. consumers' long-term interests.

Moreover, granting AT&T's rate regulation Petition would confuse foreign governments and carriers. In the last quarter alone, AT&T, WorldCom and Sprint have all raised consumer rates.²⁶ The recent rates were not only substantial – approximately 30% – which is surprising in such a competitive market as the United States, but they were remarkably similar. Yet, Globe Telecom knows of no claim that the U.S. carriers were colluding or violating their international obligations. Similar rate increases are occurring in the U.S. wireless market as well.²⁷ For the FCC to condone domestic rate increases, while preventing foreign carriers from effectuating theirs, would create the appearance of discrimination, possibly invoking claims of a denial of national treatment.

²⁶ See, e.g., Shawn Young, *AT&T, Others Increase Rates As Long-Distance Sales Shrink*, The Wall Street Journal, Jan. 2, 2003; Andrew Backover, *Long-Distance Bills Headed Upward in 2003*, USA Today, Dec. 26, 2002.

²⁷ See Jesse Drucker, *Time's Up for All Those Minutes: Mobile-Phone Plans Get Stingier*, The Wall Street Journal, Feb. 18, 2003, at D2 (noting plans of AT&T Wireless, T-Mobile USA and Cingular Wireless are all reducing number of minutes in customer plans).

VIII. STOPPING PAYMENTS WILL HARM COMPETITION ON THE U.S.-PHILIPPINES ROUTE.

The FCC should also decline AT&T's request because an FCC grant ordering U.S. carriers to stop payments will harm competition on the U.S.-Philippines route by enabling AT&T to flout its contract obligations and by allowing AT&T to reverse whipsaw Filipino carriers. If the FCC grants AT&T's Petition, it will provide AT&T with sufficient negotiating power to "whipsaw" Filipino carriers, which will harm competition on the U.S.-Philippines route. Were the FCC to grant AT&T's request to suspend payments to Filipino carriers, it would be condoning and enabling AT&T's violations of its contractual obligations to make timely payments of settlements. The U.S. Government should not condone action by U.S. entities inconsistent with their contractual obligations.

AT&T seeks a Commission order precluding all U.S. carriers from making payments to the Philippine carriers accused of whipsawing until those carriers restore the companies' disrupted circuits.²⁸ Globe Telecom reiterates that it has neither blocked nor threatened to block AT&T's direct circuits. FCC grant would provide AT&T with far greater leverage in its negotiations with these Philippine carriers. AT&T could pit one Philippine carrier against another to obtain rates more favorable than those offered to other international carriers because a carrier unwilling to accede to AT&T's demands would face the loss of payments from all U.S. carriers and possibly business to its competitors who caved to AT&T's rate demands. In fact, Globe Telecom fears that AT&T withheld its December payment, and failed to pay in February, to increase its leverage in discussions with Globe Telecom.

²⁸ AT&T Petition at 1.

Moreover, if AT&T reverse whipsaws Philippine carriers into meeting their rate demands, AT&T—which already dominates the market for international telecommunications services—will attain an unfair competitive advantage over other U.S. carriers terminating traffic in the Philippines. Many U.S. carriers are already contractually obligated to pay the very rates about which AT&T complains. Because the rates at issue here are not accounting rates, they are not governed by the international settlements policy. Thus, AT&T is otherwise free to obtain a lower termination rate from the Philippine carriers than that agreed to by other U.S. carriers.

As noted above, if the FCC assists AT&T in reverse whipsawing Philippine carriers into terminating their Philippine traffic at lower rates than those offered to other carriers both in the U.S. and in other parts of the world, this will encourage other carriers to engage in price arbitrage—routing their traffic to the Philippines through AT&T and away from compliant carriers—to further distort competition on the route. It will also undermine the NTC decision requiring non-discriminatory interconnection rates. While the Commission generally encourages least-cost routing practices that take advantage of price arbitrage opportunities, and, by increasing competitive pressure in foreign markets, place downward pressure on rates,²⁹ it has never advocated arbitrage activities on routes where the independent regulator has found the rates to be reasonable. For example, in authorizing U.S. carriers to offer international call-back service using an uncompleted call signaling configuration, the FCC prohibited them from

²⁹ 1998 Biennial Regulatory Review—Reform of the International Settlements Policy and Associated Filing Requirements; Regulation of International Accounting Rates, Notice of Proposed Rulemaking, 13 FCC Rcd 15320, 15334 (1998); International Settlement Rates, Notice of Proposed Rulemaking, 12 FCC Rcd 6184, 6189 (1996), *aff'd sub nom.*, *Cable and Wireless plc v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999); Policy Statement on International Accounting Rate Reform, 11 FCC Rcd 3146, 3149 (1996).

offering such service in countries that had prohibited "call-back."³⁰ In fact, just last year, the Commission reiterated that, as a general matter, "it is in the interests of U.S. carriers to act in a manner consistent with foreign law."³¹

IX. THE FCC NEED NOT AFFORD AT&T INTERIM RELIEF.

The Commission should reject AT&T's request for an "immediate stop payment order" against Globe Telecom.³² Contrary to AT&T's assertions, the circumstances here do not "fully satisfy the *Virginia Petroleum Jobbers Ass'n v. Federal Power Commission* criteria under which the Commission evaluates requests for interim relief."³³ Under *Virginia Petroleum*, the FCC examines (1) petitioner's likelihood of success on the merits, (2) the threat of irreparable harm to petitioner absent grant of interim relief, (3) the degree of injury to others if interim relief is granted, and (4) whether issuance of an order granting interim relief will further the public interest.³⁴ Even if, as AT&T maintains but Globe Telecom disputes, there is a strong likelihood of success on the merits, consideration of the other *Virginia Petroleum* criteria requires that denial of AT&T's request for interim relief.

AT&T will not suffer irreparable harm if the Commission does not issue an immediate stop payment order against Globe Telecom. First, Globe Telecom continues to terminate the

³⁰ *VIA USA, Ltd.*, 9 FCC Rcd at 2290. The FCC did so notwithstanding the fact that it had "expressed steadfast support for call-back as an important alternative calling mechanism that places downward pressure on above-cost international rates for U.S. consumers." *Enforcement of Other Nations' Prohibitions NPRM*, ¶ 3.

³¹ *Enforcement of Other Nations' Prohibitions NPRM*, ¶ 1.

³² AT&T Petition at 13.

³³ AT&T Petition at 14.

³⁴ *Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

traffic that AT&T hands off to it; therefore, Globe Telecom is not inhibiting AT&T's continued provision of service on the U.S.-Philippines route and has not placed AT&T at a competitive disadvantage vis-à-vis other U.S. carriers providing service on this route. Second, AT&T has been and continues to withhold payments from Globe Telecom. AT&T is not paying the higher interconnection rates at issue here. Indeed, AT&T is not paying at all for switched voice termination by Globe Telecom. Third, even if AT&T were paying the higher rates about which it complains, AT&T already has increased the rates that it charges consumers for calls to the Philippines.³⁵

Moreover, another factor weighs against grant of interim relief. If the FCC grants interim relief, such action will harm Globe Telecom and other Filipino carriers, which rely on revenues from international termination services to operate their networks. In view of the fact that the denial of interim relief against Globe Telecom will cause no irreparable harm to AT&T but the grant of such relief would cause great harm to Globe Telecom, Globe urges the Commission to deny AT&T's request for an immediate stop payment.

As noted, AT&T has already raised consumer rates on the Philippines route, possibly in anticipation of paying the increased termination rates, so U.S. consumers are already paying an increased collection rate. But the \$.21 cents that AT&T is already charging U.S. fixed line consumers and US \$.29 that it is charging wireless consumers for calls to the Philippines compares well to neighboring countries. Current AT&T collection rates, per minute, to India are

³⁵ See below.

\$0.42; to Indonesia \$0.36; Thailand \$0.27, and Vietnam \$0.67.³⁶ Because the threatened “injury” to U.S. consumers AT&T claims justifies an order to stop payments to Filipino carriers has already come to pass, the FCC is not justified in taking such a drastic measure.

In fact, as noted above, most of the other countries in the world have accepted Globe Telecom’s new termination rates to the Philippines. Analyzed carefully, what AT&T seeks to do, in effect, is to have the FCC elevate it into the status of a preferred wholesale voice provider for the rest of the world, to the detriment of non-U.S. carriers who have agreed to the new rates with Globe. Other countries’ governments cannot support an anti-competitive approach.

X. CONCLUSION

For the reasons set forth above, Globe Telecom respectfully requests that the Commission deny AT&T’s Petition. If the FCC acts in this matter at all, it should order AT&T to pay its Filipino correspondents immediately all receivable sums outstanding, including the approximately US \$3.8 million due Globe Telecom for January through September 2002 traffic, and the remaining US \$10 million, consistent with the terms of AT&T’s contractual obligations.

Respectfully submitted,

Globe Telecom

By: /s/

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³⁶ See www.shop.att.com/offer/0,15275,service=international*portal=shopatt*offer=shop-... 2/20/2003 (click on AT&T AnyHour International Savings Plan to locate drop box for particular country) (last visited Feb. 20, 2003).

Washington, DC 20006
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Counsel for Globe Telecom

EXHIBIT 1



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION
BIR Road, East Triangle, Diliman, Quezon City

MEMORANDUM CIRCULAR

No. 09-07-2002

SUBJECT: IMPLEMENTING RULES AND REGULATIONS (IRR) FOR
SPECIFIC GUIDELINES FOR COMPETITIVE WHOLESALF
CHARGING FOR INTERCONNECT SERVICES

PREAMBLE

WHEREAS, The State recognizes the vital role of telecommunications in nation-building and economic development and in its desire to attain universal access, it shall promote the rapid expansion of telecommunications services in all areas of the Philippines in order to maximize the use of all available telecommunications facilities, and to ensure that every user of the public telecommunications shall have access to such facilities at a mandated standard of service and at reasonable prices;

WHEREAS, under Republic Act 7925, otherwise known as the Telecommunications Policy Act of 1995, the National Telecommunications Commission is mandated to ensure equity, reciprocity and fairness in adopting an access charge formula or revenue sharing agreement between interconnecting public telecommunications entities;

WHEREAS, Memorandum Circular No. 14-7-2000, issued by the Commission on July 14, 2000, provides a new regulatory framework for interconnection of the networks of public telecommunications entities to address the legal, economic and technical constraints that continue to hamper the continued growth and development of the sector,

WHEREAS, under the said circular, the Commission is tasked to establish and prescribe wholesale pricing principles and guidelines in order for the PTEs to provide telecommunications services at prices that are transparent, reasonable and having regard to economic feasibility;

WHEREAS, under the said circular, the Commission is tasked to undertake mediation in a negotiation where the public interest warrants, or to arbitrate a dispute arising from a failure in negotiation between PTEs regarding interconnection.

WHEREAS, the Commission proposes to implement a smooth progression from the existing interconnect arrangements to the cost based interconnect arrangements envisaged under Memorandum Circular No. 14-7-2000.

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WHEREAS, the provisions set out in these implementing rules and regulations represent the first step in moving towards cost based interconnect, by establishing fair and consistent charging principles which take into account the costs of providing the services.

WHEREFORE, the Commission, by virtue of the powers vested upon it by law, does hereby promulgate the following implementing rules and regulations:

Article I

APPLICABILITY OF THE PROVISIONS

Section 1. These rules shall be applicable to all duly authorized public telecommunications entities (PTEs) as defined in R.A. 7925.

Article II

DEFINITION OF TERMS

Section 2. The definitions provided in Section 2 of Memorandum Circular No. 14-7-2000 and Section 2 Memorandum Circular No. 6-9-2001 are carried forward and are applicable to these implementing rules and regulations. In addition, the following words and phrases shall have the meaning assigned to them unless the context otherwise requires:

- a. **Basic Interconnect Service** - A fixed or mobile network interconnect service supplied by a PTE which provides the signaling and functionality to connect calls between an end-user and the point of interconnect to another PTE for voice or data calls in either direction
- b. **Ancillary Interconnect Service**- Any interconnect service serving as supplement to basic interconnect service.
- c. **Cost Based Interconnect Charges** - Interconnect charges which are calculated using appropriate cost principles ~~to~~ be determined by the Commission.
- d. **Retail Service** - A Telecommunications Service provided by PTEs to End Users.

Article III

GENERAL PRINCIPLES RELATING TO THE CHARGES FOR INTERCONNECT SERVICES

Section 3. The charges, terms and conditions for the supply of Basic and Ancillary Interconnect Services shall be pursued through bilateral negotiations subject to the following principles.

a) The charges for Interconnect Services shall be consistent with the principles and requirements set out in Section 18 of KA7923 and Sections 5, 10, 11, 12, Article XI and Article XII of MC 14-7-2000.

b) The charges for Interconnect Services should be non-discriminatory, meaning:

(i) At a particular POI, the charges offered by a PTE to other PTEs, should be the same for all PTEs where they are utilizing the same infrastructure and functionality

(ii) Where a PTE with end-user access infrastructure at a particular POI offers to another PTE a volume discount, this same volume discount shall be offered to all other PTEs who are interconnected or who seek interconnection at the same POI irrespective of whether they have competing end-user access infrastructure in the same area or not.

c) The charges that a PTE applies to other PTEs for equivalent Interconnect Services and/or Retail Services must not be higher than the internal transfer prices for Interconnect Services and/or Retail Services applied by it to its own internal businesses.

d) A PTE must not make the supply of an Interconnect Service conditional upon the supply of another service, facility or equipment. Factors which may have the effect of making supply conditional shall include the following:

(i) contractual terms or conditions;
(ii) where the charge for a bundled offering of two or more services is less than the sum of the charges for the individual component services, facilities and/or equipment to other PTEs, end users or itself.

e) Contracts and agreements between PTEs for the supply of Interconnect Services shall not include clauses which unreasonably restrict an interconnected PTE from directing traffic to another PTE in the same or another area. As a general principle, clauses in contracts and agreements which restrict interconnected PTEs from exercising choice of supply between PTEs for origination and termination of telecommunications traffic shall require the approval of the Commission to be binding. The Commission will only approve such contracts upon demonstration by the PTEs that these are done in the interest of public service.

f) Contracts and agreements between PTEs for the supply of Interconnect Services shall not include clauses which unreasonably restrict an interconnected PTE from terminating the contract. As a general principle, clauses in contracts and agreements which restrict a PTE from terminating a contract for supply of Interconnect Services shall require the approval of the Commission to be binding. The Commission will only approve such contracts upon demonstration by the PTE that the same are in the public interest and provided that any such restriction shall not be more than one (1) year from the date of commencement of the supply of services. Factors which may constitute an unreasonable restriction on termination of the contract include:

- (i) penalty payments to be paid on early termination;
- (ii) unreasonably long periods for notification of termination;
- (iii) penalties in relation to volume discounts received where the agreement has been in force for a period of longer than one year.

g) The service quality and reliability of Interconnect Services and long distance carriage services provided by a PTE to another PTE shall be no less favorable than that provided by the PTE to its own internal businesses, subsidiaries, related entities, any other PTE or end user, for equivalent services.

h) Predatory pricing shall not be allowed. In general, a charge will be considered predatory if it is below the appropriate cost of supplying the service, and/or is at a level that is so low that it can not be sustained in the long term when compared to the charges for Interconnect Services.

i) In all instances, the charges shall not be of a level that is above competitive parity. In general, a charge will be considered to be above competitive parity when the charge for Interconnect Services is higher than the market price of a Retail Service supplied using that Interconnect Service or an equivalent service.

j) A PTE must not enter into agreements with other PTEs to restrict the supply of Interconnect Services to other PTEs.

Section 4.

Upon the execution of an interconnect agreement or an amendment thereto, interconnecting PTEs shall submit a report to the Commission of their interconnect charges. In the event of a dispute, the Commission may require the interconnecting PTEs to submit the interconnect charges they impose on their own internal businesses and subsidiaries.

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Section 5. The Commission shall apply the principles set out in this Memorandum Circular and such other relevant memoranda in the implementation and administration of all matters relating to the charges for Interconnect Services.

Section 6. The Commission and all PTEs shall apply the principles defined in this Memorandum Circular in a uniform and consistent manner to all Interconnect Services offered by any PTE to any other PTE.

Section 7. The charges shall be negotiated on a commercial basis. In calculating the charges, the PTE shall ~~take~~ into account the attributable costs of the service, share of business overhead costs and rate of return which shall be estimated on a fair and reasonable basis. In general, fair and reasonable means that the charges for such services shall recover only the attributable proportion of the efficient operating and maintenance costs, an attributable proportion of the return of an efficient level of investment in assets utilized in providing the services over a reasonable economic asset life (i.e.: economic depreciation), and encompass a reasonable return on investment in assets employed to provide the Interconnect Services.

Section 8. In the event that PTEs are unable to agree on the charges for Interconnect Services and in the exercise of its functions, the Commission shall apply the principles adopted in this Memorandum Circular and may take into account the following factors;

- (i) the information available to the Commission on the costs of providing the services;
- (ii) the relativities between the costs of providing different Interconnect Services;
- (iii) the relativities between the costs of providing an Interconnect Service and the charges for Retail Services provided using that Interconnect Service.

Article IV

CONSTRUCTION OF THE RULES

Section 9. These rules shall be interpreted to promote and encourage interconnection between and among all the telecommunications carriers.

Article V

FINAL PROVISIONS

Section 10. Any portion or section of these rules which may be declared invalid or unconstitutional shall not affect the validity of the other remaining portions or sections

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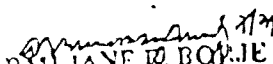
Section 11. All existing memoranda, circulars, rules and regulations inconsistent with the provisions of this memorandum circular are hereby repealed or amended accordingly.

Section 12. This Memorandum Circular shall take effect fifteen (15) days following its publication in the Official Gazette or in a newspaper of general circulation in the Philippines; *Provided*, that at least three (3) certified copies thereof be filed with the University of the Philippines Law Center.

Quezon City, Philippines. 31 July 2002


ELISEO M. RIO JR.
Commissioner


KATHI BEN G. HECETA
Deputy Commissioner


ARMII JANE B. BORNE
Deputy Commissioner

EXCCAD

Published:

The Manila Times

August 7, 2002

EXHIBIT 2

Republic of the Philippines
Congress of the Philippines
Metro Manila

Third Regular Session

Begun and held in Metro Manila, on Monday the twenty-fifth day of July, nineteen hundred and ninety-four.

[REPUBLIC ACT NO. 7925]

AN ACT TO PROMOTE AND GOVERN THE DEVELOPMENT OF PHILIPPINE TELECOMMUNICATIONS AND THE DELIVERY OF PUBLIC TELECOMMUNICATIONS SERVICES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled.

ARTICLE I. GENERAL PROVISIONS

SECTION 1. *Short Title* - This Act shall be known as the "Public Telecommunications Policy Act of the Philippines."

SEC. 2. *Scope and Application* - This Act shall apply to all public telecommunications entities in the Philippines.

SEC. 3. *Definitions and Interpretations* - For purposes of this Act, the following terms shall be used:

- a) *Telecommunications* - any process which enables a telecommunications entity to relay and receive voice, data, electronic messages, written or printed matter, fixed or moving pictures, words, music or visible or audible signals or any control signals of any design and for any purpose by wire, radio or other electromagnetic, spectral, optical or technological means.
- b) *Public telecommunications entity* - any person, firm, partnership or corporation, government or private, engaged in the provision of telecommunications services to the public for compensation.
- c) *Broadcasting* - an undertaking the object of which is to transmit over-the-air commercial radio or television messages for reception of a broad audience in a geographic area.
- d) *Franchise* - a privilege conferred upon a telecommunications entity by Congress, authorizing that entity to engage in a certain type of telecommunications service.
- e) *Local exchange operator* - an entity providing transmission and switching of telecommunications services, primarily but not limited to voice-to-voice service, in a geographic area anywhere in the Philippines.
- f) *Inter-exchange carrier* - an entity, sometimes referred to as carrier's carrier or national backbone network operator, authorized to install, own and operate facilities which connect local exchanges within the Philippines and to engage in the business of inter-exchange national long distance services.
- g) *International carrier* - an entity primarily engaged in the business of providing transmission and switching of any telecommunications service between the Philippines and any other point of the world to which it has an existing correspondent or prospective interconnection agreements.
- h) *Value-added service provider (VAS)* - an entity which relying on the transmission, switching and local distribution facilities of the local exchange and inter-exchange operators, and overseas carriers, offers enhanced services beyond those ordinarily provided for by such carriers.
- i) *Public toll calling station* - a non-exclusive facility at which the public may, by the payment of appropriate fees, place as well as receive telephone calls and/or telegrams or other messages.

j) *Mobile radio telephone system* - a wide area mobile, radio telephone system with its own switch, base stations and transmission facilities capable of providing high capacity mobile telecommunications by utilizing radio frequencies.

k) *Interconnection* - the linkage, by wire, radio, satellite or other means, of two or more existing telecommunications carriers or operators with one another for the purpose of allowing or enabling the subscribers of one carrier or operator to access or reach the subscribers of the other carriers or operators.

ARTICLE II. POLICY AND OBJECTIVES

SEC. 4. *Declaration of National Policy* - Telecommunications is essential to the economic development, integrity and security of the Philippines, and as such shall be developed and administered as to safeguard, enrich and strengthen the economic, cultural, social and political fabric of the Philippines. The growth and development of telecommunications services shall be pursued in accordance with the following policies:

- a) A fundamental objective of government is to develop and maintain a viable, efficient, reliable and universal telecommunication infrastructure using the best available and affordable technologies, as a vital tool to nation building and development;
- b) The expansion of the telecommunications network shall give priority to improving and extending basic services to areas not yet served. For this purpose, government shall promote a fair, efficient and responsive market to stimulate growth and development of the telecommunications facilities and services, with emphasis on the accessibility by persons to basic services in unserved and underserved areas of affordable rates;
- c) The radio frequency spectrum is a scarce public resource that shall be administered in the public interest and in accordance with international agreements and conventions to which the Philippines is a party and granted to the best qualified. The government shall allocate the spectrum to service providers who will use it efficiently and effectively to meet public demand for telecommunications service and may avail of new and cost effective technologies in the use of methods for its utilization;
- d) Rates and tariff charges shall be fair, just and reasonable and for this purpose, the regulatory body shall develop tariff structures based on socioeconomic factors and on financial, technical and commercial criteria as measures to ensure a fair rate of return as a tool to ensure economic and social development;
- e) Public telecommunications services shall be provided by private enterprises. The private sector shall be the engine of rapid and efficient growth in the telecommunications industry;
- f) A healthy competitive environment shall be fostered, one in which telecommunications carriers are free to make business decisions and to interact with one another in providing telecommunications services, with the end in view of encouraging their financial viability while maintaining affordable rates;
- g) A fair and reasonable interconnection of facilities of authorized public network operators and other providers of telecommunications services is necessary in order to achieve a viable, efficient, reliable and universal telecommunications services;
- h) The government shall give all the assistance and encouragement to Philippine international carriers in order to establish interconnection with other countries so as to provide access to international communications highways on a competitive basis;
- i) For efficiency, practicability, and convenience, but with due regard to the observance of due process at all times, regulation of telecommunications entities shall rely principally on an administrative process that is stable, transparent and fair, giving due emphasis to technical, legal, economic and financial considerations;
- j) No single franchise shall authorize an entity to engage in both telecommunications and broadcasting, either through the airwaves or by cable;
- k) Ownership of public telecommunications entities to as wide a number of people as possible, preferably to its customers, in order to encourage efficiency and public accountability and to tap personal savings shall be encouraged;
- l) The development of a domestic telecommunications manufacturing industry to meet the needs of the Philippines and to take advantage of export opportunities shall be promoted without preventing, deterring or hampering the goal of full universal service;

and

m) Human resources skills and capabilities must be harnessed and improved to sustain the growth and the development of telecommunications under a fast changing telecommunications environment.

ARTICLE III. ADMINISTRATION

SEC. 5. Responsibilities of the National Telecommunications Commission. - The National Telecommunications Commission (Commission) shall be the principal administrator of this Act and as such shall take the necessary measures to implement the policies and objectives set forth in this Act. Accordingly, in addition to its existing functions, the Commission shall be responsible for the following:

- a) Adopt an administrative process which would facilitate the entry of qualified service providers and adopt a pricing policy which would generate sufficient returns to encourage them to provide basic telecommunications services in unserved and underserved areas;
- b) Ensure quality, safety, reliability, security, compatibility and inter-operability of telecommunications facilities and services in conformity with standards and specifications set by international radio and telecommunications organizations to which the Philippines is a signatory;
- c) Mandate a fair and reasonable interconnection of facilities of authorized public network operators and other providers of telecommunications services through appropriate modalities of interconnection and at a reasonable and fair level of charges make provision for the cross subsidy to unprofitable local exchange service areas so as to promote telephone density and provide the most extensive access to basic telecommunications services available at affordable rates to the public;
- d) Foster fair and efficient market conduct through, but not limited to, the protection of telecommunications entities from unfair trade practices of other carriers;
- e) Promote consumers welfare by facilitating access to telecommunications services whose infrastructure and network must be geared towards the needs of individual and business users;
- f) Protect consumers against misuse of telecommunications entity's monopoly or quasi-monopolistic powers by but not limited to the investigation of complaints and exacting compliance with service standards from such entity; and
- g) In the exercise of its regulatory powers, continue to impose such fees and charges as may be necessary to cover reasonable costs and expenses for the regulation and supervision of the operations of telecommunications entities.

SEC. 6. Responsibilities of and Limitations to Department Powers. - The Department of Transportation and Communications (Department) shall not exercise any power which will tend to influence or effect a review or a modification of the Commission's quasi-judicial functions.

In coordination with the Commission, however, the Department shall, in accordance with the policies enunciated in this Act, be responsible for:

- a) the development and maintenance of a long-term strategic national development plan for telecommunications to serve as a guide to the industry and potential investors as well as to the Commission;
- b) the coordination of research and development activities in government with the work of other institutions in the field of telecommunications;
- c) the representation and promotion of Philippine interests in international bodies, and the negotiation of the nation's rights and obligations in international telecommunications matters; and
- d) the operation of a national consultative forum to facilitate interaction amongst the telecommunications industries, user groups, academic and research institutions in the airing and resolution of important issues in the field of communications.

ARTICLE IV. TELECOMMUNICATIONS ENTITIES

SEC. 7. *Categories of Telecommunications Entities.* - A telecommunications entity shall be authorized to operate in one or more of the telecommunications categories mentioned in this Act provided each category is covered by its franchise.

SEC. 8. *Local Exchange Operator.* - A local exchange operator shall:

- a) provide universal basic telephone service to all subscribers who applied for such service, within a reasonable period and at such standards as may be prescribed by the Commission and at such tariff as to sufficiently give it a fair return on its investments.
- b) be protected from uncompensated bypass or overlapping operations of other telecommunications entities in need of physical links or connections to its customers in the area except when it is unable to provide, within a reasonable period of time and at desired standard, the interconnection arrangements required by such entities.
- c) have the first option to provide pay telephone services or public calling stations in the area covered by its network.
- d) be entitled to a fair and equitable revenue sharing arrangement with the inter-exchange carrier or such other carriers connected to its basic network.

SEC. 9. *Inter-Exchange Carrier.* - The number of entities allowed to provide inter-exchange national long distance services may be limited, but as a matter of policy, where it is economically viable, at least two (2) carriers, shall be authorized: Provided, however, That a local exchange carrier shall not be restricted from operating its own inter-exchange carrier service if its viability is dependent thereto. Such inter-exchange carrier shall have the following obligations:

- a) It shall interconnect with other networks in the same category and with local exchange carriers or other telecommunications entities, upon application and within a reasonable time period, and under fair and reasonable level of charges, in order that domestic and international long distance services are made possible; and
- b) It shall have the right to establish and operate its own tandem switching facilities to which international calls or overseas carriers have to course their messages or signals.

SEC. 10. *International Carrier.* - Only entities which will provide local exchange services and can demonstrably show technical and financial capability to install and operate an international gateway facility shall be allowed to operate as an international carrier.

The entity so allowed shall be required to produce a firm correspondent or interconnection relationships with major overseas telecommunications authorities or carriers within one (1) year from the grant of the authority.

The international carrier shall also comply with its obligation to provide the local exchange service in unserved or underserved areas within three (3) years from the grant of the authority as required by existing regulations: Provided, however, That said carriers shall be deemed to have complied with the said obligation in the event it allows an affiliate thereof to assume such obligation and who complies therewith.

Failure to comply with the above obligations shall be a cause to cancel its authority or permit to operate as an international carrier.

SEC. 11. *Value-added Service Provider.* - Provided that it does not put its own network, a VAS provider need not secure a franchise. A VAS provider shall be allowed to competitively offer its services and/or expertise, and lease or rent telecommunications equipment and facilities necessary to provide such specialized services, in the domestic and/or international market in accordance with network compatibility.

Telecommunications entities may provide VAS, subject to the additional requirements that:

- a) prior approval of the Commission is secured to ensure that such VAS offerings are not cross-subsidized from the proceeds of their utility operations;
- b) other providers of VAS are not discriminated against in rates nor denied equitable access to their facilities; and

c) separate books of accounts are maintained for the VAS.

SEC. 12. *Mobile Radio Services.* - In a local telephone exchange area, more than one duly enfranchised provider of mobile radio services, distinct and separate from the local exchange carrier, may be allowed to operate. However, such entities shall secure prior authority from the Commission and, in addition, comply with the conditions imposed on VAS and with the norms on radio frequency spectrum utilization.

The operator of a mobile radio telephone system shall comply with its obligations to provide local exchange service in unserved and underserved areas in accordance with existing regulations. Failure to comply with this obligation within three (3) years from the grant of the authority shall be a cause to cancel its authority or permit to operate a mobile radio telephone system.

SEC. 13. *Radio Paging Services.* - Duly enfranchised radio paging services involving either voice or data messages, shall be allowed to compete freely in rates, number of operators, or variety of operating modalities, subject only to the norms on radio frequency spectrum utilization.

ARTICLE V. OTHER SERVICES AND FACILITIES

SEC. 14. *Customer Premises Equipment.* - Telecommunications subscribers shall be allowed to use within their premises terminal equipment, such as telephone, PABX, facsimile, data, record, message and other special-purpose or multi-function telecommunication terminal equipment intended for such connection: Provided, That the equipment is type-approved by the Commission.

SEC. 15. *Radio Frequency Spectrum.* - The radio frequency spectrum allocation and assignment shall be subject to periodic review. The use thereof shall be subject to reasonable spectrum user fees. Where demand for specific frequencies exceed availability, the Commission shall hold open tenders for the same and ensure wider access to this limited resource.

ARTICLE VI. FRANCHISE, RATES AND REVENUE DETERMINATION

SEC. 16. *Franchise.* - No person shall commence or conduct the business of being a public telecommunications entity without first obtaining a franchise.

The Commission, in granting a Certificate of Public Convenience and Necessity (CPCN), may impose such conditions as to duration and termination of the privilege, concession, or standard or technical aspects of the equipment, rates, or service, not contrary to the terms of the franchise. In no case, however, shall the CPCN be shorter than five (5) years, nor longer than the life of the franchise. A CPCN expiring at the same time as the franchise shall be deemed to have been renewed for the same term if the franchise itself is also renewed or extended.

Expansion and financing of network and services, utilizing equipment compatible with or homologous to existing or previously approved plant and facilities, in order to service additional demand in the same areas where the previously approved network and services have been installed, shall not require any approval by the Commission.

The upgrading of existing plant and network facilities including the financing thereof, for the purpose of retiring or replacing obsolete or outmoded equipment with state of the art equipment and technology in order to improve the quality or grade of service being rendered to the public within the same areas covered by the existing plant and facilities previously approved, shall likewise not require the approval of the Commission.

The Commission, however, shall not grant a subsequent CPCN for another segment of service or extend the area service coverage of an entity which has failed to satisfactorily comply with its commitments to the Commission to provide a particular service in the original area coverage under an earlier authorization.

SEC. 17. *Rates and Tariffs.* - The Commission shall establish rates and tariffs which are fair and reasonable and which provide for the economic viability of telecommunications entities and a fair return on their investments considering the prevailing cost of capital in the domestic and international markets.

The Commission shall exempt any specific telecommunications service from its rate or tariff regulations if the service has sufficient competition to ensure fair and reasonable rates or tariffs. The Commission shall, however, retain its residual powers to regulate rates or tariffs when ruinous competition results or when a monopoly or a cartel or combination in restraint of free competition

exists and the rates or tariffs are distorted or unable to function freely and the public is adversely affected. In such cases, the Commission shall either establish a floor or ceiling on the rates or tariffs.

SEC. 18. Access Charge/Revenue Sharing. - The access charge/revenue sharing arrangements between all interconnecting carriers shall be negotiated between the parties and the agreement between the parties shall be submitted to the Commission. In the event the parties fail to agree thereon within a reasonable period of time, the dispute shall be submitted to the Commission for resolution.

In adopting or approving an access charge formula or revenue sharing agreement between two or more carriers, particularly, but not limited to a local exchange, interconnecting with a mobile radio, inter-exchange long distance carrier, or international carrier, the Commission shall ensure equity, reciprocity and fairness among the parties concerned. In so approving the rates for interconnection between the telecommunications carriers, the Commission shall take into consideration the costs of the facilities needed to complete the interconnection, the need to provide the cross-subsidy to local exchange carriers to enable them to fulfill the primary national objective of increasing telephone density in the country and assure a rate of return on the total local network investment that is at parity with those earned by other segments of the telecommunications industry: Provided, That international carriers and mobile radio operators which are mandated to provide local exchange services, shall not be exempt the requirement to provide the cross-subsidy, when they interconnect with the local exchanges of other carriers. Provided, further, That the local exchanges which they will additionally operate shall equally be entitled to the cross-subsidy from other international carriers, mobile radio operators, or inter-exchange carriers interconnecting with them.

SEC. 19. Uniform System of Accounts. - The Commission shall require telecommunications entities to set up a uniform system of accounts which shall be one of the bases in establishing rates and tariffs. Where a single entity spans more than one category of telecommunications service, a separate book of accounts shall be maintained for each category or specialized classification.

ARTICLE VII. RIGHTS OF TELECOMMUNICATIONS USERS

SEC. 20. Rights of End Users. - The user of telecommunications service shall have the following basic rights:

- a) Entitlement of utility service which is non-discriminatory reliable and conforming with minimum standards set by the Commission;
- b) Right to be given the first single-line telephone connection or the first party-line connection within two (2) months of application for service, against deposit, or within three (3) months after targeted commencement of service in the barangay concerned per the original schedule of service expansion approved by the Commission, whichever deadline comes later;
- c) Regular, timely and accurate billing, courteous and efficient service at utility business offices and by utility company personnel; and
- d) Thorough and prompt investigation of, and action upon complaints. The utility shall endeavor to allow complaints to be received over the telephone and shall keep a record of all written or phoned-in complaints.

ARTICLE VIII. TELECOMMUNICATIONS DEVELOPMENT

SEC. 21. Public Ownership. - In compliance with the Constitutional mandate to democratize ownership of public utilities, all telecommunications entities with regulated types of services shall make a bonafide public offering through the stock exchanges of at least thirty percent (30%) of its aggregate common stocks within a period of five (5) years from effectivity of this Act or the entity's first start of commercial operations, whichever date is later. The public offering shall comply with the rules and regulations of the Securities and Exchange Commission.

SEC. 22. Privatization of Existing Facilities. - The Department shall, within three (3) years from effectivity of this Act, privatize all telecommunications facilities currently owned and/or operated by the government for public use, plus those facilities currently being planned under various bilateral funding arrangements. Unless otherwise authorized by law, privatization of telecommunications facilities as well as construction of telephone infrastructure shall be made through public bidding.

SEC. 23. Equality of Treatment in the Telecommunications Industry. - Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall ipso facto become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises:

Provided, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise.

ARTICLE IX. FINAL PROVISIONS

SEC. 24. *Transitory Provision.* - All telecommunications services deregulated hereby and which are operating at the effectivity of this Act, may continue to have their rates and tariffs approved by the Commission until the end of the calendar year of the effectivity of this Act.

Existing franchises that are not operating or without pending applications for certificates of public convenience at the time of effectivity of this Act are deemed revoked.

All interconnection agreements previously entered into between telecommunications carriers shall remain in full force and effect but the parties shall, within six (6) months from the effectivity of this Act, review their access charging/revenue sharing formula and submit to the Commission an amendment thereof, if necessary, in order to comply with the guidelines on the access charging/revenue sharing formula contained in Section 18 of this Act.

SEC. 25. *Separability Clause.* - Any portion or provisions of this Act that may be declared unconstitutional or invalid shall not have the effect of nullifying other portions or provisions hereof as long as such remaining portions or provisions can still subsist and be given effect in their entirety.

SEC. 26. *Repealing Clause* - All laws, ordinances, rules, regulations and other issuances of parts thereof, which are inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 27. *Effectivity Clause* - This Act shall take effect fifteen (15) days from the date of its publication in at least two (2) newspapers of general circulation.

Approved: March 1, 1995

(SGD). FIDEL V. RAMOS
President of the Philippines

EXHIBIT 3



14 February 2003

AT & T
412 Mount Kemble Avenue
Morristown, New Jersey

Attention : MR. MARK MILLER
Regional Director
Asia Pacific Route

MS. JOY DALLEY
Route Manager

Dear Ms. Dalley,

Thank you for your letters of 07 February 2003 and 11 February 2003. We take this opportunity to respond to both letters and clarify our position relative to the state of our relationship with AT & T.

At the outset, we clarify that to date AT & T continues to pass traffic through the direct circuits between Globe and AT & T. We have never threatened to block you, and neither have we prohibited you from sending traffic through our circuits. We, did, however, request you to refrain from sending traffic to us if you are not amenable to the new termination rates so as to prevent the build-up of receivables from you that may be disputed at a later date. We believe that we are and remain in compliance with the Order of the National Telecommunications Commission dated 7 February 2003, which among others states :

"1. Philippine telecommunication carriers with existing and effective agreements with foreign telecommunications carriers relative to termination rates shall comply with the terms thereof, specifically in maintaining the flow of traffic in and between circuits and facilities covered by such agreements.

2. Philippine telecommunication carriers without existing and effective agreements relative to termination rates are encouraged, as stated in the Order of January 31, 2003, to negotiate and conclude agreements. Pending any conclusion, the parties may agree on provisional/interim arrangements for continuity of service."

Please note that the rate agreement between us expired last 31 January 2003. We had notified you as early as 26 December 2002, or some five (5) weeks prior to the expiration of the agreement, of our new termination rates to the Philippines. At the meeting between ourselves and representatives of AT & T at the PTC last 20 January 2003, we explained to you the context of Philippine termination rates and why we believed that our rates were reasonable and appropriate. Our position on the matter has been accepted by more than 27 carriers worldwide, all of which have accepted our new termination rates.

Despite repeated follow-up with AT & T leading all the way up to the 31 January 2003 expiration date, AT & T simply turned down our proposal without, however, making any counterproposal whether for new rates or for interim rates. We took this, therefore, as an indication of your unwillingness to negotiate a new rate. This prompted us to take two steps: *first*, to prevent future traffic being disputed, we requested that you refrain from sending traffic to us in the absence of any agreement on an effective rate for your traffic to us; and *second*, effective 01 February 2003, we ceased to terminate your traffic destined for networks other than Globe's. With respect to the latter action, you also know that access charges for traffic from Globe's international gateway (which acts like a transit or wholesale provider) to other Philippine carriers had

Globe Telecom Plaza, Pioneer corner Madison Streets, 1552 Mandaluyong City, Philippines
P.O. Box M-073 MPO, Mandaluyong Municipal Bldg., 1501 Mandaluyong City, Philippines
Tel. Nos.: (632) 730-2000 • Fax: (632) 739-2000 • Telex: 40199 OPRNS PM

increased to USD 0.12 per minute (for local exchanges) and USD 0.16 per minute (for mobile networks) effective 01 February 2003. Like international gateways in 27 other foreign countries, our international gateway agreed to these new termination rates to Philippine networks. We would have incurred substantial losses had we continued to pass your traffic destined for other Philippine local exchanges and mobile networks after 31 January 2003 without your agreement to the new termination rates to these Philippine networks. However, we did, and we continue to, terminate your traffic destined for the Globe network, and you continue to pass traffic to our network through our direct circuits despite our request.

It was in fact only with your 11 February 2003 letter that you first indicated a counter-proposal and a willingness to come to an interim arrangement for traffic pending negotiations. This letter comes on the back of the 07 February 2003 Order of our National Telecommunications Commission (NTC) aforesaid, and only after you had filed with your Federal Communications Commission a petition seeking to halt all payments to us.

On the back of all of this, you had committed to pay your payables to us in the amount of USD 3.5 Million out of a total payable of USD 13.5 Million (representing partial settlement of payables for August to September 2002 accounts) as far back as December 2002, and again on 04 February 2003. Both deadlines passed without your remitting payment on the same. To our minds, you apparently withheld these payments to give you an undue advantage in your negotiations with us and added leverage in your petition with your Federal Communications Commission (FCC) seeking to halt all payments to us.

All the foregoing indicate to us that you are unwilling to negotiate, or at least unwilling to negotiate with us on a level playing field.

That notwithstanding, and even as we find your counterproposal of rates of USD 0.065 (LEC-terminating) and USD 0.10 (mobile-terminating) unacceptable as being without any reasonable basis, now that you have finally indicated a willingness to negotiate we would be most willing to engage in discussions with you to again explain the basis of our proposed rates. Such discussions, however, must take into context the petition you have filed with your FCC seeking to halt all payments to us. In the same vein, while we would be most willing to consider an interim arrangement as we continue our discussions on a new termination rate, we believe that this becomes difficult in the context of your current request to your regulator seeking to halt all payments to us.

To nonetheless move forward, we propose the following:

- (1) Since you continued to pass traffic to our networks despite our request to you not to do so in the absence of an effective rate, and given the lack of any counterproposal from you up to 11 February 2003, all traffic passed to us from the period 01 February 2003 and up to 11 February 2003 will be charged at the rates stated in our letter of 26 December 2002 to you.
- (2) As an interim arrangement, all traffic passed after 11 February 2003 will be charged at the rates stated in our letter of 26 December 2002 unless and until we both agree otherwise. Should any subsequent agreement between us indicate other rates for traffic passed prior to the date of that subsequent agreement, we will both make the appropriate adjustments in our settlements.
- (3) You will promptly make remittance of all your payables within three (3) Philippine banking days of your receipt of this letter. Moreover, you will continue to remit payment to us for all payables, including any which may be incurred pursuant to items (1) and (2) above, as they fall due.

The foregoing are designed to restore order and parity in our relations and therefore provide both of us with a suitable basis for good faith negotiations going forward. Again, we reiterate that while we are willing in good faith to come to the table and negotiate with you, we believe it best if such negotiations are not complicated by threats of withholding settlements pending the completion of such negotiations.

Finally, we are advised that the stop payment order you seek, if issued, may cover past payables as well payments for traffic you may pass to us after such an order has been issued. While you are, of course, well within your rights to petition your regulator for whatever remedies you feel are just under the circumstances (as we are within our rights to seek the appropriate action from our regulators as well) our continuing to accept your traffic despite such a stop payment order, if issued, would expose us to an unnecessary risk of receivables without any assurance of payment. Nothing in the aforementioned Order of our NTC dated 07 February 2003, nor in law, requires us to render service to you (or to any party) without any assurance of prompt payment. Moreover, under Article 6 of our ITSA, "*Notwithstanding any other provision of this Agreement, if a party fails to pay a net balance due in accordance with sub-paragraph 5b . . . and such default continues for a period of at least sixty (60) days, the non-breaching party may, at its option and after providing thirty (30) days' written notice to the defaulting party, (a) restrict, suspend or terminate its own participation in the services covered hereby, and the non-breaching party shall be released from its obligations under this Agreement until any balance due is paid x x x (b) handle only calls that are billed to its own customers, retain all the revenues, and continue such practice until payment of any outstanding balance due has been made x x x*" The foregoing, we believe, applies to both your past payables to us - incurred well before the filing of your current petition with the FCC - and any future payables you may incur.

We hope that we have made our position on this matter clear.

Very truly yours,



GIL B. GENIO
Head, Wireline Business

Copy furnished :

MR. MICHAEL BEHRENS
AT & T International Law
Of Counsel

EXHIBIT 4



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION
BIR Road, East Triangle, Diliman, Quezon City

February 07, 2003

MEMORANDUM ORDER

Philippine Long Distance Telephone Company (PLDT)
SMART Communications Inc.
GLOBE Telecom Inc.
Bayan Telecommunications Inc.
Other Public Telecommunications Entities (PTEs) similarly situated

SUBJECT: NTC Memorandum Order dated January 31, 2003 re: Maintaining Status Quo of existing communications circuits in the interest of public service and national welfare.

In response to the Order of this Commission dated 31 January 2003, as duly enfranchised and authorized service providers in the Philippines, you made representations and commitments before the Commission, to always maintain your communication circuits open and ensure no disruption of service. You have likewise informed the Commission that in keeping with international practice, national laws and commercial agreements, you shall protect and promote your interest to negotiate mutually agreed international termination rates with other foreign administrations.

Further, the Commission is informed that as of this date, you have arrived at a number of bilateral agreements/arrangements for the increase in termination rates, with operating foreign administrations. While two, three or four administrations have not agreed on the increased termination rates, negotiations are on-going.

As shown, Philippine termination rates, even at increased rates, are still well below the FCC benchmark rate of US\$.19/minute for low middle income economies, such as the Philippines. It is also shown that these rates are low compared with ITU suggested target settlement rates for countries with teledensity between 1 to 5 telephones per 100 population which is US\$.238 per minute.

ft

gms

[Signature]

WHEREFORE, with your commitment and pursuant to the mandate to give assistance and encouragement to Philippine international carriers to establish interconnection with other countries so as to provide access to international communications highways on competitive basis, the National Telecommunications Commission (NTC) hereby AMENDS its Order dated 31 January 2003 with respect to the termination rates, as follows:

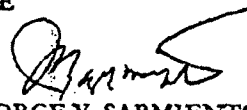
1. Philippine telecommunication carriers with existing and effective agreements with foreign telecommunication carriers relative to termination rates shall comply with the terms thereof, specifically in maintaining the flow of traffic in and between circuits and facilities covered by such agreements; and
2. Philippine telecommunication carriers without existing and effective agreements relative to termination rates are encouraged, as stated in the Order of January 31, 2003, to negotiate and conclude agreements. Pending any conclusion, the parties may agree on provisional/interim arrangements for continuity of service.

This Order is issued with a warning that the Commission shall exact observance of your responsibilities as a public service provider, to include that of keeping open your communication circuits to promote **PUBLIC SERVICE AND NATIONAL WELFARE** and maintain level playing field in the conduct of your operations. All other interconnection issues/concerns relative to the termination rates, such as access charges, shall be addressed accordingly in the context of this memorandum in compliance with the interconnection mandate.

FOR COMPLIANCE.


ARMI JANE R. BORJE
Commissioner


KATH BEN G. HECETA
Deputy Commissioner


JORGE V. SARMIENTO
Deputy Commissioner

Copy furnished: The Executive Secretary, Malacañang
The Secretary, Dept. of Transportation and Communications
Attn: Undersecretary Virgilio L. Peña

EXHIBIT 5

410021803

TUESDAY, FEBRUARY 18, 2003

RESUMPTION OF SESSION

At 4:10 P.M., the session was resumed with the Hon. Franklin M. Ellison, President of the Senate, presiding.

The President. The session is resumed.

The Majority Leader is recognized.

Senator Legarda. Mr. President, I ask that we proceed to the Reference of business.

The President. There is no Additional Reference of business as of this point.

Senator Osmeña (S). Mr. President.

The President. What is the pleasure of Senator Osmeña?

Senator Osmeña (S). Mr. President, I arise to be recognized on a matter of personal and collective privilege.

The President. May the good senator state for the record the personal and collective privilege for which he wishes to be recognized?

Senator Osmeña (S). Yes, Mr. President.

4200219

First of all. I would like to commend the distinguished gentleman for bringing this to our attention.

Earlier, I read a press statement by Senator Recto to this effect. But what the distinguished gentleman brought out is to him disturbing. To this representation now, it is alarming. He echoes my point a few days ago

when I was starting to call our republic a "commonwealth". I was waiting for him to ask whether that note I read on a piece of paper did come from him. He was asking, I think, we are now a colony or we are still a colony. something to that effect.

Anyway, in the paper that the gentleman has distributed to us... Mr. President, did we say or a line in the third paragraph says:

This direct presence in the vital government agencies has allowed AGILE to make great strides in policy reform. But I heard the gentleman saying they have moles in these offices mentioned. When we say "mole" what

430J210

now and would ABILE have anything to do with this also?

Mr. President, right now, the telecommunications industry is in a very big problem. It is facing a very big issue being raised by the FCC.

The FCC is a counterpart of the NTC. But, apparently, the two big telecom companies in the United States have raised issues against the telecom industries in the Philippines because of rates that the telecom industries in the Philippines are charging. But if we take note of the rates, it is very small in amount and way below the maximum allowed.

The telecom companies in the Philippines particularly Globe, Smart, PLDT, BayanTel, these companies have entered into a bilateral agreements with different telecom companies privately. They have agreed to stick to a certain amount that would benefit both companies.

430J218

But, apparently, knowing this fact, a big American group has raised an issue and if my information is right, it was the United States Embassy that called the attention of the NTC to the fact that this could not be so.

NTC informed the telecom companies that they cannot do it. The telecom companies said: "Why can't we? This is a private agreement between us, businessmen."

Realizing the mistake, the NTC held back its order. But, apparently, the big companies like AT&T and MCI World Com. brought it to the FCC.

Right now, everything is frozen. The telecom companies cannot collect. Nothing is done because of the issue raised by these big American companies to the FCC.

Would the gentleman think that when he mentioned that on the 3rd Floor of the tower of the Telecommunications Commission the AGILE was also present? Would the

gentleman think that AGILE has anything to do with this issue, Mr. President?

Senator Deneña (S). This is not policy. This is a reaction to a dispute arising out of what they call the "accounting rates" between U.S. and Philippine telecommunications firms.

However, the AGILE, if its officials sit inside the NTC, would probably be telegraphing our punches to their counterparts in the United States and telling them in advance what we are thinking. What the commissioners of the NTC are thinking about, are going to do, what their Plan A, Plan B or Plan C will be and that means that they already know what our strategy is and yet we do not know what their strategy is.

Mr. President, we have always, and I have seen this on several occasions, we have always had this inferiority complex whenever we are negotiating with United States whether it is our Civil Aeronautics

Board with the Federal Aviation Administration or the FAA, or our National Telecommunications Commission with the FCC or the Federal Communications Commission. Whether it is on shipping issues, on trade issues ay parati tayong nagkakaroon ng inferiority complex as if we are still the colony of the United States.

So, we tend to give in right away before we even start the negotiation and they already know what our position is.

Now, Mr. President. I lived in the United States for 14 years....

PO - The President

Senator Omeña (S).

Now, Mr. President. I lived in the United States for 14 years. These guys are hard-nosed. But we can negotiate with them. We can be as tough as they are. They will probably respect us more for it. But the way we do it is we go there cup in hand, asking, begging and that is not the way to negotiate.

So what happened? In 1992, we signed the US-RP Air Services Agreement where we promised them open skies by October 1, 2003.

How is this possible, Mr. President? It is only possible because we go there, willing to give away the whole ship where we have only a very small boat and the Americans have a huge aircraft carrier.

So, here, Mr. President, I really believe that perhaps the Senate should look into this because we always end up on the losing side of every negotiating situation that we have with the United States. We lost out also in the Visiting Forces Agreement. Why? Because nakaluhod na ang mga Filipino official. Tatanggap daw tayo ng military aid. Nasaan iyong military aid?